

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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JOHN JAFFEE and LORRAINE JAFFEE,  
Individually and as Next Friends to DUSTIN  
JAFFEE and ASHLEY JAFFEE, Minors,

Plaintiffs-Appellants,

v

BRENT BIERMA, KATHLEEN MCKEE, LINDA  
SKIPSKI, CYNTHIA DOYLE, TONY  
APPLEYARD, DARYL BEAN, DARYL  
BOUGHTON, and MARILU FRANKS,

Defendants-Appellees.

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UNPUBLISHED  
October 21, 2003

No. 239636  
Cass Circuit Court  
LC No. 97-000586-CZ

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JOHN JAFFEE and LORRAINE JAFFEE,  
Individually and as Next Friends to DUSTIN  
JAFFEE and ASHLEY JAFFEE, Minors,

Plaintiffs-Appellants,

v

STATE OF MICHIGAN FAMILY  
INDEPENDENCE AGENCY, CASS COUNTY  
FAMILY INDEPENDENCE AGENCY,  
VANBUREN COUNTY FAMILY  
INDEPENDENCE AGENCY, and ST. JOSEPH  
COUNTY FAMILY INDEPENDENCE  
AGENCY,

Defendants-Appellees.

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No. 239637  
Court of Claims  
LC No. 97-016763-CM

Before: Griffin, P.J., and Neff and Murray, JJ.

PER CURIAM.

Plaintiffs John and Lorraine Jaffee, foster parents and eventual adoptive parents and next friends of the minor children, Dustin and Ashley, filed two lower court actions against the State

of Michigan Family Independence Agency (FIA), various FIA agencies, and FIA employees, one in the Cass Circuit Court and one in the Court of Claims. In the circuit court action against the FIA employees, plaintiffs alleged claims for: (1) negligence; (2) gross negligence; (3) violation of their rights to free speech, peaceable assembly, due process, adequate medical care, and equal protection, contrary to 42 USC 1983; (4) intentional infliction of emotional distress; and (5) tortious interference with contractual or business relations. In the court of claims action against the FIA and its agencies, plaintiffs alleged violations of state and federal constitutional rights to free speech, peaceable assembly, and due process. The two actions were joined below and the trial court granted summary disposition to all defendants under MCR 2.116(C)(7) (governmental immunity) and (C)(8) (failure to state a claim). This Court granted plaintiffs' delayed applications for leave to appeal. We affirm.

Plaintiffs argue that summary disposition was improperly granted because the trial court failed to confine its review to the factual adequacy of the complaint. We disagree.

A motion under MCR 2.116(C)(8) tests the "legal sufficiency of the complaint on the basis of the pleadings alone." *Mack v Detroit*, 467 Mich 186, 193; 649 NW2d 47 (2002). "All factual allegations are accepted as true, along with any inferences or conclusions which may be fairly drawn therefrom." *Ambro v American Nat'l Bank & Trust Co*, 152 Mich App 613, 616-617; 394 NW2d 46 (1986). In reviewing a motion for summary disposition on the basis that a claim is barred by governmental immunity, MCR 2.116(C)(7), a court must accept as true a plaintiff's well-pleaded factual allegations, and consider any affidavits or other documentary evidence and construe them in the plaintiff's favor. *Terrace Land Development Corp v Seeligson & Jordan*, 250 Mich App 452, 455; 647 NW2d 524 (2002).

Contrary to what plaintiffs argue, governmental immunity is not an affirmative defense, but is a characteristic of government that prevents imposition of tort liability. *Mack, supra* at 198, n 14. As such, plaintiffs were required to plead their case in avoidance of immunity. *Id.* Thus, "[t]o survive a motion for summary disposition, [a] plaintiff must allege facts warranting the application of an exception to governmental immunity." *Codd v Wayne Co*, 210 Mich App 133, 134-135; 537 NW2d 453 (1995). "If the facts are not in dispute and reasonable minds could not differ concerning the legal effect of those facts, whether a claim is barred by immunity is a question for the court to decide as a matter of law." *Poppen v Tovey*, 256 Mich App 351, 354; 664 NW2d 269 (2003).

"Absent a statutory exemption, a governmental agency is immune from tort liability when it exercises or discharges a governmental function." *Maskery v U of M Bd of Regents*, 468 Mich 609, 613; 664 NW2d 165 (2003); MCL 691.1407(1). The term "governmental function" includes an activity that is expressly or impliedly mandated or authorized by constitution, statute, local charter or ordinance, or other law. MCL 691.1401(f). The term "governmental function" is broadly construed, while exceptions to immunity are narrowly construed. *Maskery, supra*.

"Section 1983 provides a civil remedy to persons deprived of constitutional rights by individuals acting under color of state law." *Dowerk v Oxford Charter Twp*, 233 Mich App 62, 74; 592 NW2d 724 (1998). "To sustain a claim under § 1983, a party must prove that the complained-of conduct was committed by a person acting under color of state law, and that the conduct deprived the party of rights, privileges, or immunities secured by the United States Constitution." *Id.*

We agree that plaintiffs' complaint fails to sufficiently plead a claim in avoidance of governmental immunity. Governmental employees are entitled to tort immunity for injuries caused while in the course of their employment if, at the time of the injury, they were or reasonably believed they were acting within the scope of their authority, and their conduct does not amount to gross negligence. MCL 691.1407(2)(a).

Plaintiffs' general allegations that defendants are not immune are insufficient to state a claim in avoidance of governmental immunity. As the trial court observed, conclusory statements, unsupported by factual allegations, are insufficient to state a cause of action. *Churella v Pioneer State Mutual Ins Co*, \_\_\_ Mich App \_\_\_; \_\_\_ NW2d \_\_\_ (Docket No. 238695, issued 8/28/03), slip op p 7; *Kramer v Dearborn Heights*, 197 Mich App 723, 725; 496 NW2d 301 (1992). Moreover, plaintiffs' specific allegations are directed at defendants' handling, supervision, and investigation of foster children, which involve activities in the discharge or exercise of a governmental function. Indeed, "social workers" are entitled to absolute immunity for "initiating and monitoring child placement proceedings" in order to assure that the "caseworkers" can make the discretionary decisions they believe are in the children's best interests without fear of litigation. *Spikes v Banks*, 231 Mich App 341, 346-347; 586 NW2d 106 (1998); *Martin v Children's Aid Society*, 215 Mich App 88, 95-98; 544 NW2d 651 (1996).

Plaintiffs' complaint also fails to state a claim for gross negligence. To survive a motion for summary disposition on the basis of governmental immunity, the complaint must contain allegations to support the claim of gross negligence. *Stanton v Battle Creek*, 466 Mich 611, 619-621; 647 NW2d 508 (2002); *Jackson v Saginaw Co*, 458 Mich 141, 149-151; 580 NW2d 870 (1998). Here, construed most favorably to plaintiffs, reasonable minds could not differ in concluding that the alleged conduct does not arise to a level of gross negligence. *Id.* at 151; MCL 691.1407(2)(c).

We also conclude that plaintiffs' complaint fails to allege a constitutional violation that would support a claim for liability under § 1983. We are aware of no constitutional right entitling plaintiffs to remain as foster parents after leaving children unsupervised, entitling foster children to remain in a particular foster home, or entitling foster parents to have the final word about which physician to rely on in the case of a conflict. Indeed, in Michigan, foster parents do not have standing to seek custody of foster children, *In re Shaffer*, 213 Mich App 429, 437; 540 NW2d 706 (1995), and the state agency has sole responsibility for the placement and care of foster children, *Oakland Probate Court v DSS*, 208 Mich App 664; 528 NW2d 215 (1995). Because plaintiffs' constitutional claims lack merit, their § 1983 claim must fail. *Dowerk, supra* at 74.

Affirmed.

/s/ Richard Allen Griffin  
/s/ Janet T. Neff  
/s/ Christopher M. Murray